



POLICE DEPARTMENT

February 27, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Derrick Hardy  
Tax Registry No. 933831  
Identification Section  
Disciplinary Case No. 2011-6184  
-----

The above-named member of the Department appeared before me on May 21, and August 6, 2014, charged with the following:

1. Said Police Officer Derrick Hardy, on or about June 30, 2011, while assigned to the 20<sup>th</sup> Precinct, engaged in conduct prejudicial to the good order and efficiency of the Department, to wit: said Officer did fail to assist Police Officer Muhammad Qazi in that while attempting to place an individual known to the Department under a lawful arrest, said Officer Hardy pushed Police Officer Qazi away from said individual to prevent him from placing said individual under said lawful arrest.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT  
PROHIBITED CONDUCT

The Department was represented by Marissa Gillespie, Esq., Department Advocate's Office, and Respondent was represented by Michael F. Dailey, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Guilty.

Background

This incident came to the Department's attention because the arrest was posted on YouTube as an example of excessive force. After the tape came to the attention of the Internal Affairs Bureau, Respondent was charged.

It is undisputed that on June 30, 2011, Respondent and Qazi were working together. Respondent was the driver and Qazi the recorder. The two were called to an accident on 59<sup>th</sup> Street and West End Avenue involving a Toyota truck and a yellow taxi.

The truck driver, Person A, claimed that the driver of the yellow cab, Person B rear ended his truck and caused the accident. Person A was irate, yelling, and screaming at the cab driver. Person B was blaming the truck driver, but was not yelling.

Person A showed Qazi the damage on the back of his truck, but Qazi did not believe the damage was from this current accident. Respondent could also see that the damage Person A claimed was inconsistent with the accident. Person A was not happy with Qazi's assessment.

Qazi went back to the police vehicle with Respondent to prepare the paperwork. He filled out the portion of the Accident Report called "Accident Description/Officer's Notes." He determined that Person B's story, and not Person A's story, corresponded with what really happened. Qazi gave the incident slip to Person B along with instructions and Person B



proceeded to drive away. Then he gave the same slip and instructions to Person A and returned his license, registration and insurance.

Person A started screaming, "I want to see the report, I'm going to see it." He insisted that Qazi write down his version of what had occurred and that Qazi show him the report. Qazi told Person A it was not finished yet. Both officers explained that he would receive a copy of the report in a couple of days.<sup>1</sup> When Person A insisted on speaking with their supervisor, Respondent radioed for the supervisor to come.

Meanwhile Person A's car was double-parked in an area that was a residential neighborhood and where a crowd was gathering. Qazi ordered Person A three or four times to leave and take his car from the area, but Person A did not comply. Qazi then decided to issue Person A a summons.

### The Arrest

Qazi testified that he was unable to prepare a summons without getting Person A's height, weight and eye color from his license. This information was not in the accident report which Qazi had already prepared. He asked Person A for his driver's license again and Person A refused. Qazi warned Person A that if he did not give Qazi his driver's license, Qazi would arrest him. When Person A refused to comply a second time, Qazi pulled out his cuffs and told Person A to turn around. Person A refused to be cuffed by "stiffening up his body, stiffening up his hands." Because "he kept moving his body" and Respondent was not helping, it took Qazi "a long time to finally cuff him."

Meanwhile, Respondent was standing only a couple of feet away.

---

<sup>1</sup> When there is an automobile accident the officers are not allowed to hand the copy of the report out on the scene. They are required to review it for accuracy and then have a supervisor sign off on it.

After he cuffed Person A, Qazi testified, Person A threw himself on the ground and started yelling even louder for help. Person A was now on the sidewalk, blocking pedestrian traffic near the car traffic. Qazi tried to pick him up.

Respondent had a different perspective on what transpired. He heard Person A say that he knew his rights and Qazi reply that Person A did not have any rights. Upset by this response, Person A exclaimed, "What do you mean I do not have any rights?" According to Respondent, Qazi tried to end the conversation by saying, "Give me your driver's license." The motorist said, "No, I am not giving you my driver's license, for what?" Respondent told Qazi that the information needed to write the summons was in the accident report that Qazi had already prepared.

Instead of putting Person A in the back of the RMP which Respondent thought would have been appropriate, Qazi brought Person A over to the sidewalk. Respondent could not understand this and looked away to watch for his supervisor. Then he heard "a loud thud." When he looked back, Person A was on the ground.

Respondent initially tried to help Qazi pick Person A off of the ground. But when Qazi tried to lift Person A up a second and third time, Respondent did not assist.

#### The Videotape

Respondent, Qazi and Person C, who videotaped the incident, all described what they observed while Qazi attempted to restrain Person A. Their statements were fairly consistent with what the videotape shows.



The videotape starts with Respondent pulling Qazi away from Person A. The two partners appear to be arguing, with Respondent telling Qazi to stop. Qazi then returns to try to pick up Person A by himself. Qazi is struggling to get Person A to stand up.<sup>2</sup>

Meanwhile, Respondent stands by and watches. Qazi leans over Person A telling him to get up. Eventually, Person A gets up and the two appear to be walking together. Person A can be then be seen heading toward a car door and a noise is heard as his body contacts the car.<sup>3</sup>

Qazi appears to lead Person A away from this car toward the patrol car. Then Person A comes down to the ground again. Respondent comes over and pushes Qazi away. Respondent stands over Person A while Person A continues to scream.

Throughout the entire videotape Person A is yelling, "Help me, help me. Somebody please. Help me." The evidence at trial established that this yelling caused pedestrians to stop and a small crowd to gather. (See also RX A p. 16)

The videotape ends before the supervisor arrived. When the supervisor came, Person A was taken into custody. Person A was arrested and charged with resisting arrest and disorderly conduct. In November 2012, Person A received an adjournment in contemplation of dismissal.

---

<sup>2</sup>

In his testimony, Qazi explained that Person A was much larger; Qazi is 5' 9", 190 pounds and Person A is about 6' 1", about 250 pounds.

<sup>3</sup>

Qazi testified that Person A lunged toward the door of his own car.

Findings

Respondent is charged with failing to assist his partner, Qazi, by pushing Qazi away and preventing Qazi from making an arrest.

Respondent believed that the arrest was unlawful so that he was justified in intervening in the arrest of Person A. Respondent indicated that Qazi should have waited for the supervisor to come before arresting or trying to restrain Person A. Respondent also demonstrated in the video that he felt that there was no reason for Qazi to arrest Person A.

Respondent claimed that Qazi tried to lift Person A by the cuffs. This alarmed Respondent because this was not the way he had been trained to lift someone. Either because Person A was being "passive resistant" or because Qazi did not have a good grip on Person A fell and "almost hit his head on the concrete." Because he was concerned that the situation might soon cross the line into unnecessary force against an emotionally disturbed person, Respondent intervened before that could happen. Because Person A was so much bigger, Respondent was also concerned that Qazi would get hurt. A crowd gathered around, Respondent's attorney argued, only because they could see Qazi manhandling Person A.

The Advocate argued that Respondent was required to assist his partner in arresting Person A, and with lifting Person A off the ground and bringing him to the police car. The Court agrees.

The evidence indicated that the arrest was lawful. Qazi articulated that Person A was consistently refusing to obey his orders. Person A's vehicle was double parked illegally during rush hour. He was being loud, irate, and his agitation was escalating, drawing a



crowd. Person A was also holding a pen which Qazi was concerned might be used as a weapon.

Respondent initially tried to help, but then stopped. Respondent believed that Qazi should have brought Person A to the patrol car right away. Thus Respondent understood it was important to get Person A into the RMP.

Respondent considered it "questionable" that Person A's body struck his own "vehicle at such a force." However, in his official Department interview he expressed the belief that Person A tried to flee toward his own car. Respondent also conceded that Qazi did not use excessive force against Person A.

At one point Respondent turned away to look for his supervisor and missed what was happening. There was no time for the partners to discuss everything. Respondent may have misunderstood what Qazi was trying to do and even believed, based on what he heard and saw, that Qazi should not have arrested Person A.

Nonetheless, as a police officer, Respondent was required to not stand by and watch his partner struggle repeatedly to pick Person A up from the ground. Qazi was trying to pick Person A up and put him in the RMP "to deescalate the situation" and wait for the sergeant to arrive. The videotape showed that, by himself, Qazi was unable to control a passively resistant and emotionally disturbed person who was taller than and outweighed both Qazi and Respondent. Qazi had every reason to expect that his partner would help him. Instead, Respondent left Qazi alone to engage in a protracted useless struggle which caused a crowd to gather.

Respondent had a duty to secure the scene and assist his partner in placing Person A in the back of the car. Instead, Respondent pushed his own partner away, preventing

Qazi from doing his job and leaving Person A on the sidewalk screaming. Accordingly, Respondent is found Guilty of pushing his partner away and preventing his partner from effecting a lawful arrest.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 20, 2004. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Advocate recommended a penalty of ten vacation days. Under the circumstances, this recommendation for Respondent's failure to assist and preventing his partner in effecting an arrest is appropriate. Therefore, it is recommended that Respondent forfeit ten vacation days.

Respectfully submitted,

**APPROVED**

MAR 27 2015  
*William J. Bratton*  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

*Amy J. Porter*  
Amy J. Porter  
Assistant Deputy Commissioner-Trials



POLICE DEPARTMENT  
CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER DERRICK HARDY  
TAX REGISTRY NO. 933831  
DISCIPLINARY CASE NO. 2011-6184

For the last two years, Respondent has received an overall rating of 4.0 "Highly Competent" on his annual performance evaluation. In 2010, he was rated 4.5 "Extremely Competent/Highly Competent." [REDACTED]

[REDACTED] He has been on Level II Discipline Monitoring since April 2012. He has no prior formal disciplinary record.

For your consideration.



Amy J. Porter  
Assistant Deputy Commissioner-Trials